

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT MICHAEL JACKSON,

Plaintiff-Appellee,

v

MELONIE PATRICIA JACKSON,

Defendant-Appellant.

UNPUBLISHED

April 10, 2012

No. 301953

Macomb Circuit Court

LC No. 2005-007517-DP

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant appeals by leave from an order finding her in criminal contempt for violating the trial court's order regarding the parties' minor child's schooling and for denying plaintiff parenting time. We reverse.

The contempt proceedings arose out of a divorce action between plaintiff and defendant. Plaintiff filed a motion to show cause why defendant should not be held in contempt for failing to comply with a court order regarding their child's schooling and for denying plaintiff parenting time. Plaintiff alleged that defendant refused to allow him access to the child on multiple occasions and that defendant removed the child from school. The trial court held a hearing on the motion, where plaintiff presented evidence to support his allegations. The trial court found defendant in contempt and sentenced her to 30 days in jail. On appeal, defendant argues that the trial court treated the show cause hearing as one for civil contempt, but that the court's final order held defendant in criminal contempt. Defendant contends the trial court denied her the due process safeguards required for criminal contempt proceedings. We agree.

Because defendant failed to preserve this issue through objection below, we review it for plain error affecting defendant's substantial rights. *In re Kabanuk*, ___ Mich App ___; ___ NW2d ___ (Docket No. 301536, January 19, 2012), lv pending, slip op p 4; citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To demonstrate plain error, defendant must establish: (1) an error occurred; (2) the error is obvious; and (3) the obvious error affected defendant's substantial rights. *Carines*, 460 Mich at 763. "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.* This Court grants reversal only if defendant is actually innocent or the "error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of defendant's innocence." *Id.* (quotation marks and citation omitted).

There is a fine line between civil contempt and criminal contempt, because both can result in jail time for failure to abide by a court order. *Porter v Porter*, 285 Mich App 450, 456; 776 NW2d 377 (2009). One distinction between the two types of contempt is whether the trial court is punishing the defendant for violating the court's order, or is instead holding the defendant until the defendant complies with the order. *Id.* at 455. When the trial court punishes a defendant "for past misconduct that was an affront to the court's dignity[,] the court is exercising its criminal contempt power. *Id.* Alternatively, when the trial court issues sanctions to coerce a defendant to comply with an order, it is exercising its civil contempt power. *Id.* at 455-456. Although civil sanctions may have a punitive effect, "the proper focus [in civil contempt] is whether there is some act that can be coerced by the sanction so that the contemnor's performance of the act will put him into compliance with the underlying order." *In re Contempt of Dougherty*, 429 Mich 81, 99; 413 NW2d 392 (1987).

It is important to differentiate between the two forms of contempt because "a criminal contempt proceeding requires some, but not all, of the due process safeguards of an ordinary criminal trial." *Dougherty*, 429 Mich at 91. "A party charged with criminal contempt is presumed innocent, enjoys the right against self-incrimination, and the contempt must be proven beyond a reasonable doubt." *Porter*, 285 Mich App at 456. The party must "be given adequate opportunity to prepare a defense and to secure the assistance of counsel." *DeGeorge v Warheit*, 276 Mich App 587, 592; 741 NW2d 384 (2007). In contrast, a party charged with civil contempt is entitled to "rudimentary due process, i.e., notice and an opportunity to present a defense." *Porter*, 285 Mich App at 456-457. Moreover, civil contempt can be proven by a preponderance of the evidence. *Id.* at 457.

Civil contempt proceedings seek compliance through the imposition of sanctions of indefinite duration, terminable upon the contemnor's compliance or inability to comply. *Burnett v Burnett*, 152 Mich App 157, 161; 393 NW2d 562 (1986). By contrast, the purpose of criminal sanctions is to punish past disobedient conduct by imposing an unconditional and definite sentence. See *Dougherty*, *supra* at 93. [*DeGeorge*, 276 Mich App at 592.]

In addition, "[a] defendant charged with contempt is entitled to be informed not only whether the contempt proceedings are civil or criminal, but also the specific offenses with which he or she is charged." *DeGeorge*, 276 Mich App at 592.

Here, the trial court found that defendant had "consistently disobeyed the court" and had engaged in "blatant disrespect of the court's orders." Near the end of the hearing, the trial court informed defendant that she faced an "appropriate punishment to get [her] attention." The court decided upon a jail sentence as a punishment for past violations of its orders. This sanction could not coerce defendant to perform an act that would have put her in compliance with the court's previous orders. Further, the sentence was a definite one, rather than an indefinite one. Therefore, the trial court was exercising its criminal contempt power when it punished defendant with jail time.

Because defendant was subjected to a criminal contempt proceeding, she should have been afforded due process safeguards. Defendant argues that she was not informed of the

criminal nature of the proceeding against her, and that the trial court denied her the right against self-incrimination. We agree.

First, the trial court's show cause order did not identify whether the proceedings were for civil or criminal contempt. In addition, the trial court did not state the nature of the proceedings at the beginning of the show cause hearing. The court stated only that defendant could go to jail. As discussed above, this statement did not indicate whether the proceedings were civil or criminal. In addition, the record demonstrates that the trial court ordered defendant to answer the questions posed by plaintiff's counsel, thereby compelling defendant to testify against herself.

The record thus establishes that the trial court held a criminal contempt proceeding and did not afford defendant important due process safeguards to which she was entitled. Therefore, defendant has met her burden of establishing plain error affecting her substantial rights. The trial court's errors seriously affected the integrity and fairness of the judicial proceedings. Neither defendant nor her newly-appointed counsel was informed of the criminal nature of the proceedings. Further, the trial court compelled defendant to testify against herself. A trial court must uphold the integrity of judicial proceedings, and the denial of due process safeguards seriously affected the integrity of the proceedings in this case.

Reversed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck